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Supreme Court of the United States.

October Term, 1945.

Edward F. McGunnigal, Jr., et al.,
Petitioners,

v.

United States of America,
Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE FIRST CIRCUIT
and
BRIEF IN SUPPORT THEREOF.**

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Subject Index.

	Page
Petition	1
Statement of the matter involved	1
Jurisdiction	2
Questions presented	3
Reasons for granting the writ	4
Brief	7
Opinions below	7
Jurisdiction	7
Statement of the case	7
Specification of errors	7
Summary of argument	7
Argument	9
Conclusion	14
Appendix	15

Table of Authorities Cited.

CASES.

Jerome v. United States, 318 U.S. 101	8, 13
Pierce v. United States, 314 U.S. 306	8, 12, 13
Salas v. United States, 234 Fed. 842	8, 10
United States v. Lowe, 141 F. (2d) 1005	8, 12
United States v. Peoni, 100 F. (2d) 401	9, 14
United States v. Walter, 263 U.S. 15	8, 10, 11

STATUTES.

Act of Oct. 23, 1918, C. 194, 40 Stat. 1015	10, 11
Criminal Code, 65th Cong. Second Session, Amendment to Section 35	8, 11 <i>n</i> .
Judicial Code, Section 240(a), as amended, 28 U.S.C. § 347(a)	7

	Page
18 U.S.C. § 76 (Criminal Code)	8, 12
18 U.S.C. § 80 (Criminal Code, Section 35 (A))	7, 9
U.S. Constitution, Fifth Amendment	8
House of Representatives Report No. 668	8, 11 _n .
Report of Committee on the Judiciary of the House of Representatives on bill S. 3470	8, 11 _n .

Supreme Court of the United States.

OCTOBER TERM, 1945.

EDWARD F. MCGUNNIGAL, JR., ET AL.,
PETITIONERS,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

This is a petition for a writ of certiorari to review the final judgment of the Circuit Court of Appeals entered September 17, 1945 (R. 76), affirming upon a consolidated appeal the several judgments of the District Court for the District of Massachusetts entered October 30, 1944, and October 31, 1944, against the defendants, these petitioners (R. 9-16).

Statement of the Matter Involved.

The indictment (R. 1-7) charges the petitioners under 18 U.S.C. § 88, with a conspiracy to defraud the United States in violation of the "False Claims Statute," 18 U.S.C. § 80.

The petitioners were employed by Bethlehem-Hingham Shipyard, Inc., a private corporation engaged in constructing vessels of war under contracts entered into between the Shipyard corporation and the United States. The indictment charges them with conspiring to enter on daily tally sheets amounts of work in excess of that performed, so that they would be given credit and paid by the Shipyard for hours of work to which they were not truly entitled, knowing that the Shipyard would be reimbursed by the Navy Department for such fraudulent excess payments out of funds of the United States (R. 2-6).

The District Court denied motions for directed verdicts (R. 8). Upon a finding of guilty by the jury the petitioners other than Edward F. McGunnigal, Jr., were sentenced to imprisonment of two months. Edward F. McGunnigal was sentenced to imprisonment of six months (R. 9-16).

The Circuit Court of Appeals, in affirming the conviction, held that, though the petitioners, testifying in their own behalf, had denied knowledge of the fact that the ships upon which they had worked were being built under "cost plus" contracts, nevertheless they knew that those ships were being built for the United States, or an ally under lend lease, and that the United States would eventually pay for them, and knowing this much, and it being generally known that the "cost plus" type of contract was widely used by the government during the war, it might logically be inferred that the petitioners knew, or at least had reason strongly to suspect, that the payrolls which they conspired to pad would ultimately be paid by the United States (R. 73-74).

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on September 17, 1945. The jurisdiction of this court

is invoked under Section 240(a) of the Judicial Code, as amended, 28 U.S.C. § 347(a).

Questions Presented.

1. Is a conspiracy to defraud a private corporation in which the United States is not a stockholder, but with which the United States has entered into contracts for the construction of war ships on a "cost plus" basis, a criminal conspiracy to defraud the United States?

2. Must the specific intent to defraud the United States averred in an indictment for conspiracy to defraud the United States under 18 U.S.C. § 88, be established by the evidence, or will an intent to defraud a private corporation in which the United States is not a stockholder, but with which the United States has entered into contracts for the construction of war ships on a "cost plus" basis, suffice?

3. In determining whether or not defendants charged with conspiracy to defraud the United States under 18 U.S.C. § 88, know that it is the United States which is the object of the conspiracy, may an assumption, not based on any evidence, of a "general knowledge as to just how the Government had these ships built" serve as the basis for an inference by the jury of personal knowledge on the part of each defendant that the fraudulent claims would eventually be presented to the government?

4. Is there a criminal conspiracy to defraud the United States where the immediate and direct object of the unlawful agreement is not the United States but a private corporation in which the United States is not a stockholder, and where the United States may suffer only as a probable consequence of the operation of the unlawful agreement against such corporation?

Reasons for Granting the Writ.

1. The Circuit Court of Appeals has decided important questions of federal law which have not been, but should be, settled by this court.

(a) The "False Claim Statute" is a major weapon in the government's armory for its protection against fraud.

This court has heretofore construed the statute as to a fraudulent claim against a corporation in which the United States is a stockholder, holding that the statute should be interpreted "to refer only to corporations, like the Fleet Corporation, that are instrumentalities of the Government and in which, for that reason, it owns stock." *United States v. Walter*, 263 U.S. 15 (1923). It has never had occasion to pass upon the situation presented by the instant case of a fraudulent claim against a private corporation in which the government holds no stock, but which it has contracted to reimburse for work done for or materials furnished to the government.

Because of enormously expanded governmental activity and its unprecedented procurement program, the situation has arisen and will hereafter arise again and again throughout the country. It is believed that many prosecutions involving this situation either have been or will be brought throughout the country. In the District Court of the United States for the District of Massachusetts, on Tuesday, October 9, 1945, for example, more than one hundred fifty cases of "fraud against the government" involving the Bethlehem-Hingham Shipyard alone were called for arraignment, disposition, change of plea.

(b) Apart from the specific interpretation of the "False Claim Statute," the instant case presents

questions of importance in the general federal criminal law and in the administration of justice: In prosecution of a crime requiring as an essential element specific personal knowledge on the part of the defendant, may a jury be permitted to infer such knowledge from an assumption of a "general knowledge" of a "fact" which is not based upon any evidence and of which a court could not have taken judicial knowledge? In the prosecution of a conspiracy requiring a specific intent to defraud the government, will evidence tending to show that a private corporation is the immediate victim of the fraud and that only ultimately may the government be defrauded support a conviction?

2. The Circuit Court of Appeals has rendered a decision in conflict with the decisions of other Circuit Courts of Appeals on the same matter. The decision in the instant case is believed to be in conflict with the decisions in the cases of *Salas v. United States*, 234 Fed. 842 (C.C.A. 2, 1916), and *Lowe v. United States*, 141 F. (2d) 1005 (C.C.A. 5, 1944; *United States v. Peoni*, 100 F. (2d) 401 (C.C.A. 2, 1938).

3. The Circuit Court of Appeals has rendered a decision probably in conflict with applicable decisions of this court. Although this court has not passed upon the exact question of statutory interpretation here in issue, it is believed that this court has decided the question of the scope of the statute under a parallel provision of the statute, 18 U.S.C. § 76, in a way probably in conflict with the decision of the Circuit Court of Appeals. *Pierce v. United States*, 314 U.S. 306 (1941). See *United States v. Walter*, 263 U.S. 15 (1923).

Wherefore the petitioners respectfully pray that their petition for a writ of certiorari be granted.

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